

HEALTH AND SENIOR SERVICES

DIVISION OF HEALTH CARE QUALITY AND OVERSIGHT

Certificate of Need: Long Term Acute Care Hospitals

Proposed Amendments: N.J.A.C. 8:33F-2.2 and 2.3.

Authorized By: Fred M. Jacobs, MD, J.D., Commissioner,
Department of Health and Senior Services (with
the approval of the Health Care Administration
Board)

Authority: N.J.S.A. 26:2H-1 et seq.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN

Submit written comments by September 3, 2005 to:

John A. Calabria, Director

Certificate of Need and Acute Care Licensure Program

New Jersey Department of Health and Senior Services

P.O. Box 360, Room 403

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The agency proposal follows:

Summary

The purpose of these proposed amendments is to amend certificate of need requirements for new long term acute care hospitals (LTACHs) and for all licensed long term acute care hospitals proposing to alter their licensed bed complement in the future, in order to facilitate the LTACH industry's response to changes in federal rules governing Medicare reimbursement. The impetus for the establishment of rules governing LTACH facilities in New Jersey was the 1999 report prepared by the Advisory Committee on Hospitals and the 2001 follow-up report of the Post-Acute Care Work Group of the Department of Health and Senior Services (Department). These reports identified the higher than average general hospital length of stay (LOS) for New Jersey Medicare patients as a source of general hospitals' financial weakness, and lack of a full continuum of patient discharge options, including LTACHs, as a contributing factor. In the course of its work the Work Group discovered that New Jersey's seniors make less use of their Medicare long term acute care and post-acute care benefits than their counterparts in similar States. At that time, New Jersey did not have any LTACHs. The majority of the Work Group agreed that introducing LTACHs in New Jersey would offer seniors more choices and access to more appropriate care settings. It could also help reduce the acute care hospitals' LOS.

The LTACH certificate of need rules became effective upon publication in the New Jersey Register on January 21, 2003. During the initial 18-month period permitted at N.J.A.C. 8:33F-2.3(a) for the submission of initial LTACH expedited review certificate of need (CN) applications for new LTACHs, a total of 19 applications were submitted to the Department. To date, 17 of these applications have been approved for a total of 618 LTACH beds. The two remaining CN

applications, which request a total of 56 LTACH beds, are currently under review. Of the total number of CN-approved LTACH beds (618), 133 have been licensed as of January 15, 2005 (21.5 percent). Should all of the current CN applications for LTACH beds be approved, the total number of CN-approved beds would be 674. This level of LTACH CN activity represents 75.6 percent of the total LTACH bed need (892 beds), leaving an unmet need of 218 beds Statewide. Current N.J.A.C. 8:33F-2.3(a) limited the submission of initial LTACH CN applications to address the 892-bed need to an 18-month period. The methodology employed in this initial phase required applicants to assemble from general hospitals sufficient assignments of bed need for a 25-bed hospital-within-hospital LTACH or a 60-bed freestanding LTACH. The Department published for each general hospital a specific LTACH bed need, based on historical utilization data, The Department announced the start of the 18-month application period by public notice in the January 21, 2003 New Jersey Register, at 35 N.J.R. 476(b). (The Department issued a corrected public notice in the February 18, 2003 New Jersey Register at 35 N.J.R. 1157(b). As a result, LTACH CN applications were permitted to be submitted from April 1, 2003 through September 1, 2004. In October, 2004 the Centers for Medicare and Medicaid Services (CMS) adopted rules (42 CFR 412.534) that limit to twenty-five percent the percentage of patients a new hospital-within-hospital LTACH may admit from its host hospital. Since the majority of approved CNs propose a hospital-within-hospital model LTACH, the Department is concerned that the new CMS rules may discourage their implementation. Industry representatives have also expressed interest in reopening the initial phase application period, to allow reconfiguration of current approved proposals into new freestanding LTACH CN applications. Finally, there

is still an unmet LTACH need of 218 beds Statewide. Therefore, the Department believes that it would be appropriate to re-open the LTACH initial CN application period and is proposing to amend N.J.A.C. 8:33F-2.3(a), (b), (d) and (e) to extend the period of time to submit expedited review CN applications to address the initial 892-bed statewide need for a 36-month period that would begin with the adoption date of the proposed rule amendments.

The amended N.J.A.C. 8:33F-2.3(a) would change the period of time for acceptance by the Department of expedited review applications from all qualified interested parties from the current 18 months after January 21, 2003 to 36 months after the effective date of the amendments.

Amended N.J.A.C. 8:33F-2.3(b) continues to stipulate that the Department shall publish a long term acute care Statewide and hospital-specific bed need prior to accepting any expedited review CN applications for the initial application phase, but would change the length of this phase from 18 to 36 months. Subsequent to the 75 percent figure being met, applicants will be accepted for bed additions when their occupancy has exceeded 85 percent for the six most recent quarters prior to submission (N.J.A.C. 8:33F-2.3(e)1).

N.J.A.C. 8:33F-2.3(d) would likewise extend the period for initial submission of LTACH CN applications from 18 months after January 21, 2003 to 36 months after the effective date of the amendments. The remainder of this provision, which states that, after the initial application period, applications will only be accepted if at least 75 percent of the awarded CN applicants have been licensed, would remain unchanged.

N.J.A.C. 8:33F-2.3(e) continues to set standards for CN applications submitted after the initial application phase and the only change proposed would extend the initial phase from 18 months after January 27, 2003 to 36 months after the effective date of the amendments.

The Department also is proposing amendments to N.J.A.C. 8:33F-2.2, to reduce the minimum size for a free-standing LTACH from 60 to 50 beds. This reduction in the minimum facility size is being proposed to facilitate the development of freestanding LTACHs, without reducing quality of care. It will be easier for applicants to assemble the requisite bed need assignments for a 50- as compared to a 60-bed LTACH. Applicants would still need to document compliance with financial feasibility, bed need and all other certificate of need and licensing requirements as set forth in N.J.A.C. 8:33F and N.J.A.C. 8:43G-38.

In accordance with N.J.A.C. 8:33F-2.3, the Department is required to publish long term acute care Statewide and hospital-specific bed need estimates prior to the acceptance of any CN applications under the expedited review process for the first 18 months after January 21, 2003. Because the Department is proposing to extend the original window of opportunity to file applications for an additional 36 month period, the original bed need for each general hospital, calculated based on calendar year 2001 hospital discharge (UB-92) data, in accordance with the need methodology as set forth at N.J.A.C. 8:33F-2.3(b)3, will be re-published at the time of adoption. New long term acute care beds would be approved only where a documented, unassigned bed need is identified by the Department during this extended time period. Each applicant would be required to demonstrate a need for a facility with the requested number of beds

by documenting written agreements with general hospitals assigning all or part of their unassigned bed need to the applicant.

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments would extend the CN review process for initial LTACHs under the expedited review process for all new long term acute care hospitals. The proposed amendments would increase the likelihood that a significant portion of New Jersey's 892-bed need for LTACHs would be addressed through licensure of additional LTACHs. This would enhance the quality of care and improve outcomes for high-acuity, long-stay acute care patients by providing services in a clinically appropriate specialized setting.

The majority of long term acute care patients are elderly, medically complex patients who are dependent on life support systems such as ventilators, parenteral nutrition, respiratory and cardiac monitoring and dialysis as a result of trauma, extensive surgery and/or disease. Most patients in LTACH have multiple co-morbidities and are medically unstable. For these patients, LTACHs are a more appropriate alternative than a prolonged stay in an acute care hospital, because LTACHs provide specialized programs and technology for intensive medical management to optimize medical and functional capacity for each patient. The proposed amendments are expected to have a favorable social impact on these types of patients by fostering the creation of additional LTACHs in New Jersey. The addition of LTACHs as a general hospital discharge option has provided greater consumer choice for patients whose needs are not being

met by either general hospitals or post-acute care providers. However, New Jersey does not yet have the complement of LTACH beds that the Department believes would be optimal. The Department believes the proposed amendments to the rules may encourage the full complement of LTACH beds to be created.

The criteria and standards contained in the proposed amendments are designed to promote the expansion of high quality LTACH services to the extent that they are needed throughout the state.

Economic Impact

The Department anticipates the continued expansion of LTACHs up to the statewide bed need of 892 beds would have a positive financial impact on general hospitals, consumers and existing post-acute care providers. This chapter forms the basis for determining need for LTACH services and is expected to foster the orderly development of cost-efficient LTACH services throughout the State. Because it is costly to develop and maintain the extensive array of services provided at a LTACH, the public benefits only when the bed capacity is neither excessive nor inadequate. While specific economic impacts cannot be estimated, the continued development of LTACHs would allow more New Jersey beneficiaries to take full advantage of benefits available to them for LTACH services under Medicare. General hospitals, which are reimbursed under a case rate system by Medicare, would benefit from the resulting decline in their length of stay when long-stay patients can be discharged to LTACHS. Finally, LTACH applicants would benefit from the opportunity the proposed amendments would provide to reconfigure their proposals to be financially feasible in the new Medicare LTACH reimbursement environment.

The economic impact of reducing the minimum LTACH bed number from 60 to 50 beds is expected to stimulate more providers to establish these special hospitals and thereby address the State's need for LTACHs. LTACH providers who have entered the New Jersey market are largely national entities and the experience of these providers has indicated that a 50-bed minimum free-standing facility size is financially viable. The proposed lower standard provides economic flexibility to potential providers in evaluating the trade-off between capital and operating costs and revenues produced from a minimum-sized LTACH.

As far as the cost of compliance with these rules is concerned, there is the cost associated with the need for a CN. That cost would be reflected in the filing fee of the CN application, which would be \$7,500 plus .25 percent of the total project cost of each potential new or expanded LTACH. Other developmental costs might be incurred should there be a need for professional assistance (for example, architectural, planning, and legal) in the preparation of a CN application. Such costs vary from one project to another, and are subject to many variables based on the applicant's operations and vision. However, such costs are a relatively small fraction of typical project costs.

The potential costs to industry providers, however, are modest compared to the health care delivery system cost savings and benefits that are likely to accrue from the proposed amendments allowing the continued creation of lower cost alternatives to prolonged hospital stays. The proposed amendments would not change existing rules designed to assure quality of care by limiting entry to those potential providers who have demonstrated a record of strict compliance with stringent New Jersey licensure standards as well as out-of-State licensing compliance, if applicable.

Federal Standards Statement

There are no Federal planning standards governing long term acute care hospitals. Therefore, no Federal standards statement is necessary for these proposed amendments.

Jobs Impact

The proposed amendments would provide the potential for the construction of new LTACHs or the expansion of existing licensed LTACHs. This may result in some increase in construction jobs for a period of time. In addition, if new facilities are built, or existing facilities expanded, the facility providers would require new staff to provide the specialized programs and technology for intensive medical management to optimize a patient's medical and functional capacity. The proposed amendments are anticipated to have a positive impact on jobs Statewide.

Agriculture Impact Statement

The proposed rule amendments would have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The proposed amendments do not establish new reporting or recordkeeping requirements, nor do the proposed amendments change any of the existing reporting or recordkeeping requirements for making a CN application for an LTACH. Rather, the proposed amendments would extend the time period for submission of expedited CN applications for LTACHs, and reduce the threshold bed level for freestanding facilities, but otherwise continue to require that applicants meet the existing reporting and recordkeeping requirements set forth at N.J.A.C. 8:33F. Furthermore, the Department does not believe that any

applicant or approved provider would be a “small business” as that term is defined at N.J.S.A. 52:14B-16. LTAC applicants who are ultimately approved and become licensed in New Jersey would employ 100 or more people. Accordingly, the Department does not believe that a regulatory flexibility analysis is required.

Smart Growth Impact

The proposed rule amendments would have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed rule amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

8:33F-2.2 Minimum size of facilities

(a) To promote the efficient use of resources, the minimum size for a new, freestanding long term acute care hospital shall be [60] 50 beds.

(b) (No change.)

8:33F-2.3 Requirements for expansion and new construction

(a) Certificate of need applications for new long term acute care hospitals or for bed additions to long term acute care hospitals shall be filed for expedited review with the Department in accordance with the provisions of N.J.A.C. 8:33, the Certificate of Need: Application and Review Process. The Department shall accept applications for long term acute care hospitals under the expedited review process from all qualified interested parties for [the first 18] 36 months after [January 21, 2003] the effective date of these amendments.

(b) The Department shall publish a long term acute care Statewide and hospital-specific bed need prior to accepting any expedited review certificate of need applications for the [initial 18] 36 month period as set forth in subsection (a) above. The estimated bed need is calculated as follows:

1. through 3. (No change.)

(c) (No change.)

(d) Certificate of need applications for long term acute care beds may be submitted to the Department for the [18] 36 month period following [January 21, 2003] the effective date of these amendments. After this period, certificate of need applications shall only be accepted if at least 75 percent of the awarded certificate of need applicants for long term acute care beds have been implemented by licensure approval of occupancy except in the case of the following:

1. through 2. (No change.)

(e) When at least 75 percent of the total certificates of need awarded in response to applications submitted during the [initial 18] 36 month period following [January 21, 2003] the effective date of these amendments have been implemented by licensing approval for occupancy, the Department shall accept applications according to the following standards:

1. through 3. (No change.)

(f) (No change.)